

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 732 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF CHANDRABHA V GOSWAMI

Versus

CHARITY COMMISSIONER

Appearance:

MR JR NANAVATI for Petitioners

MR KG SHETH, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/06/2000

ORAL JUDGEMENT

1. This appeal arises from the impugned judgment and order dated 27/2/1978 rendered by the learned Assistant

Judge at Himatnagar in Civil Misc. Appeal No. 31/1974 in an application u/S. 72 of the Bombay Public Trusts Act, 1950 (for short 'the Act'). That application came to be filed against the judgment and order dated 1/11/1974 rendered by the Ld. Charity Commissioner, State of Gujarat in Scheme Proceedings No. 51 of 1963, which arose in the background of following facts :-

2. Shri Goswami Puramshottamlalji Maharaj, Vaishnav Haveli (Maha Mandir) situated at Idar town District Sabarkantha is registered as the Public Trust at No. A 231(S.K.). It was so registered in the year 1961. The Ld. Deputy Charity Commissioner fixed the mode of succession to be hereditary and the applicant Goswami Chandra Prabha Vahuji Maharaj was held to be the sole trustee of the said trust. One Chimanlal Keshavlal Sheth, since deceased, moved application to the Ld. Charity Commissioner for framing a scheme u/S. 50 (A) of the Act in respect of the aforesaid trust. In response to that application notices were issued and objections were invited from the persons interested in the management of the trust. The applicant however resisted the application on number of grounds inter-alia on the ground that the management of the trust ran smoothly, that there was no necessity to frame the scheme and appoint trustees and that there was some support from certain Vaishnavs of Idar for not framing the scheme. The Ld. Charity Commissioner after holding the inquiry found that it was necessary to frame the scheme. He, therefore, appointed five persons as trustees while settling the scheme. The said order of settlement of scheme passed by the Ld. Charity Commissioner was subjected to challenge in the application u/S. 72 of the Act as aforesaid.

3. The Ld. Assistant Judge heard the respective parties before him and ultimately dismissed the application with cost directing the applicant to bear her own cost and pay the cost of opponent no.1, the Charity Commissioner separately and the cost to opponents nos. 2, 4 and 5 in one set. He directed no order as to cost so far as opponents nos. 3 and 6 were concerned.

4. In this appeal against the last mentioned judgment and order of the Ld. Assistant Judge only submission that was made by the learned counsel appearing for the appellant is relatable to the order of cost as aforesaid. It was submitted that even the Ld. Charity Commissioner has not directed the cost to be borne by the appellant although the appellant's resistance to the framing of the scheme was not upheld. It was submitted

by the learned counsel that right from the registration of the trust appellant was held to be a trustee and the mode of succession was held to be hereditary. Besides, the appellant had also given the names of trustees to be appointed and the scheme was settled. The stand of the appellant was not unreasonable at any point of time either before the Ld. Charity Commissioner or before the Ld. Assistant Judge. The cost, therefore, should have been directed to come out of the funds of the trust. In reply Mr. K.G. Sheth, Ld. AGP submitted that there was no reason for the appellant to prefer application u/S. 72 of the Act when she had herself endorsed necessity for framing of the scheme and given names of the trustees when the scheme is settled. The submission of Ld. AGP cannot be accepted. The fairness shown by the appellant cannot be discounted in the manner in which it is sought to be canvassed. It is true that the appellant herself had asserted that there was a necessity of framing a scheme. It is true that in substance the appellant was aggrieved with non-consideration of the names of the trustees given by her. At the same time it has to be borne in mind that she had been the initial trustee and that too the sole trustee. It has also to be borne in mind that her trusteeship was held to be hereditary. Hence, bearing in mind these facts as well as the fact that even the Ld. Charity Commissioner thought it fit to direct the appellant as well as the respondents to bear their own cost and it would be just and proper to find that the Ld. Assistant Judge ought not to have saddled the appellant with the cost of the application u/S. 72 of the Act. That part of the order of the Ld. Charity Commissioner would, therefore, deserve to be set aside. Following order is, therefore, passed :-

This appeal is partly allowed. The substantive order passed by the Ld. Assistant Judge with regard to upholding of the scheme is maintained; whereas the order of cost against the appellant is hereby set aside. There shall be no order as to costs throughout including the cost of this appeal except that the cost of the Ld. Charity Commissioner shall come out of the funds of the trust. This appeal will stand partly allowed accordingly.

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PVR.